



Department of Justice
Canada

Ministère de la Justice
Canada

FOR INFORMATION

NUMERO DU DOSSIER/FILE #:2016-000311

COTE DE SÉCURITÉ/SECURITY CLASSIFICATION: PROTECTED B

TITRE/TITLE: Bilingualism and the Supreme Court of Canada

SOMMAIRE EXÉCUTIF/EXECUTIVE SUMMARY

- In your mandate letter, the Prime Minister has asked that you “Engage all parties in the House of Commons to ensure that the process of appointing Supreme Court Justices is transparent, inclusive and accountable to Canadians. Consultations should be undertaken with all relevant stakeholders and those appointed to the Supreme Court should be functionally bilingual”. This memorandum discusses the bilingualism component of the commitment specifically.

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s.21(1)(a)

s.21(1)(b)

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Soumis au CM/Submitted to MO: January 19, 2016



Protected B
FOR INFORMATION

2016-000311

MEMORANDUM FOR THE MINISTER

Bilingualism and the Supreme Court of Canada

ISSUE

This note provides information with respect to the Government's commitment to ensure that newly-appointed justices of the Supreme Court of Canada (SCC) are functionally bilingual.

BACKGROUND

In your mandate letter, the Prime Minister has asked that you "Engage all parties in the House of Commons to ensure that the process of appointing Supreme Court Justices is transparent, inclusive and accountable to Canadians. Consultations should be undertaken with all relevant stakeholders and those appointed to the Supreme Court should be functionally bilingual."

The *Supreme Court Act* (SCA) does not contain any provision regarding the bilingual capacity of SCC judges. The Court is also expressly excluded from the duty of institutional bilingualism set out in section 16 of the *Official Languages Act* (OLA), to which other federal courts are subject. The Supreme Court has, however, implemented administrative measures to ensure that litigants appearing before it are able to use the official language of their choice in written and oral pleadings. Simultaneous interpretation services are available to judges during oral hearings.

In recent years, unilingual appointments to the SCC have been rare. Of the 17 appointments to the SCC since 1997, only two have been unilingual Anglophones.¹ Even so, bilingual capacity has remained a point of controversy, and calls continue for the imposition of a bilingualism requirement on all new SCC appointees. Typical is the argument of Quebec Premier Philippe Couillard who, in his August 14, 2015 letter to federal party leaders, stated [translation]:

[I]n a bijuridical and bilingual country, to exercise their function, it is necessary for all of the judges of the SCC to master the French language. They must be capable of understanding, without intermediaries, the pleadings, the legislation, the case law and academic writings in French. It is important to ensure Francophones an equal status before the highest court of Canada.

He therefore asked the next federal government to "commit to making bilingualism one of the required selection criteria for all candidates for appointment to the SCC, equal to merit, excellence and good behavior."

s.21(1)(a)

¹ Rothstein J. (2006) and Moldaver J. (2011).

The Commissioner of Official Languages has likewise argued that knowledge of both official languages should be a prerequisite for appointment as a SCC judge. Private Member's Bill C-203, *An act to amend the Supreme Court Act (understanding the official languages)*, introduced by Mr. François Choquette (NDP) on December 9, 2015, proposes to impose a bilingual requirement. Two similar previous private members' bills proposed to impose a bilingualism requirement, one through an amendment to the SCA and one through an amendment to the OLA.² Both were defeated. Francophone advocacy groups, as well as media commentators and academics, have also argued for the importance of SCC litigants being heard and understood by the Court in the language of their choice.

While not disputing the importance of linguistic duality on the SCC, opponents of a mandatory bilingualism requirement cite its potential impact on regional representation, particularly from western Canada, and the possible exclusion of otherwise-meritorious candidates.³

CONSIDERATIONS

s.21(1)(a)

s.21(1)(b)

² Former Bill C-208, *An Act to amend the Supreme Court Act (understanding the official languages)*, introduced by Mr. Yvon Godin (NDP) on June 13, 2011, and former Bill C-548, *An Act to amend the Official Languages Act (understanding the official languages — judges of the Supreme Court of Canada)*, introduced by Mr. Denis Coderre (Liberal) on May 15, 2008, respectively.

³

a 2011 paper based on survey data suggests that there are significant numbers of judges with bilingual capacity serving on provincial appellate courts outside Quebec. (Overall, 30 of 124 (24%) non-Quebec appellate judges were able to hear cases in French; another 42 (34%) had some knowledge of French; this included 14 (bilingual) and 19 (some French) from the four western provinces.) Grammond, S. and Power, M. 2011. *Should Supreme Court Judges be Required to be Bilingual?* Institute of Intergovernmental Relations, Queens University.

⁴

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**is withheld pursuant to sections
est retenue en vertu des articles**

21(1)(a), 21(1)(b), 23

**of the Access to Information Act
de la Loi sur l'accès à l'information**

CONCLUSION



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